

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
REGIONAL BENCH – COURT NO.2**

Service Tax Appeal No. 75927 of 2014

(Arising out of Order-in-Original No. 12/Commr/ST/BOL/14 dated 20.03.2014 passed by Commissioner of CGST & Central Excise, Bolpur.)

M/s Asansol Durgapur Development Authority,
(1st Administrative Building, City Centre, Durgapur-713216.)

..Appellant

VERSUS

Commissioner of CGST & Central Excise, Bolpur.
(Nanoor Chandidas Road, Sian, Bolpur, Dist.-Birbhum, West Bengal-731204.)

..

...Respondent

APPERANCE :

Shri A. Chakraborty, Advocate for the Appellant
Shri P. K. Ghosh, Authorized Representative for the Respondent

With

Service Tax Appeal No. 76059 of 2014

(Arising out of Order-in-Original No. 12/Commr/ST/BOL/14 dated 20.03.2014 passed by Commissioner of CGST & Central Excise, Bolpur.)

Commissioner of CGST & Central Excise, Bolpur.
(Nanoor Chandidas Road, Sian, Bolpur, Dist.-Birbhum, West Bengal-731204.)

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VERSUS

M/s Asansol Durgapur Development Authority,
(1st Administrative Building, City Centre, Durgapur-713216.)

..

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APPERANCE :

Shri P. K. Ghosh, Authorized Representative for the Appellant
Shri A. Chakraborty, Advocate for the Respondent

CORAM:

**HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)**

FINAL ORDER No...77817-77818/2024

DATE OF HEARING : 03.10.2024

DATE OF PRONOUNCEMENT: 11.12.2024

Service Tax Appeal Nos. 75927,76059 of 2014

PER R. Muralidhar:

The Appellant, ASANSOL DURGAPUR DEVELOPMENT AUTHORITY [ADDA for short] constituted under Sections 11(1) and 11(3) of The West Bengal Town and Country (Planning and Development) Act, 1979.

2. On the ground that the appellant was rendering various services, but not paying Service Tax, a Show Cause Notice dated 12.10.2012 was issued demanding service tax of Rs. 28,39,01,510 for the period 2007-08 to 2011-12. After due process, the the Commissioner, CX & ST, Bolpur, dropped the duty demand of Rs. 25,43,53,109 and confirmed the demand of Rs.2,95,48,401. Being aggrieved by the confirmed demand, the appellant – assessee [ADDA] is before the Tribunal. The Revenue being aggrieved by the demands so dropped, have preferred their own appeal against the said impugned order. Both these appeals have been taken up together for Hearing.

3. The summary of submissions made by the Ld Counsel appearing on behalf of the appellant assessee is as under :

3.1 No basis to the calculation of the demanded amount of service tax

- (1) In course of arriving at the demanded amount of service tax proposed in the Show Cause Notice, the Department placed reliance on figures obtained from the bank statements of the assessee for the said period. The bank account references, and the total figures drawn therefrom are tabulated in Annexure A to the Show Cause Notice (*vide* **page 21** of the Paper Book dt. 15.7.2014).
- (2) A bare perusal of such tabulation will indicate, that no details are provided of the specific transactions reflected in the bank statements that the adjudicating authority deemed to be taxable. No copy of the relied upon bank statements even form part of the specified enclosures to the Show Cause Notice (*vide* page 17 of the Paper Book dt. 15.7.2014).

Service Tax Appeal Nos. 75927,76059 of 2014

- (3) No parties to any contract are named or mentioned, no transactions within the statements are highlighted or summarised in any reference sheet of any sort, and no dates specific to any transaction reflected in the bank statements are provided either.
- (4) Only the total figures of disputed unspecified transactions are reflected in the stated tabulation accompanying the Show Cause Notice, to purportedly justify the demanded service tax.
- (5) The adjudication order passed in pursuance of the Show Cause Notice also does not provide any additional party-wise or date-wise details specific to the disputed transactions lifted from the bank statements and/or final accounts, wherever applicable. The portion of demand confirmed, or even the portion of demand that has been dropped is not accompanied by any supporting reference to parties, contracts, dates of transactions, or the source record.
- (6) It is trite law that the burden of proving taxability lies on the Department. The assessed taxable turnover however, appears to have no supporting basis to its quantification in the present case. Allegations have been made generally against the assessee herein that it has rendered taxable services during the said period, with no reliable source/record/basis being disclosed as to how the disputed turnover was even assessed in the first place.
- (7) Such infirmity goes to the root of the instant dispute, and fundamentally vitiates the Show Cause Notice as well as the said impugned order of adjudication, and renders the subject impugned adjudication proceedings, illegal, invalid and void ab initio

3.2 Services undertaken by a Sovereign/Government Department or Agency in pursuance of a statutory obligation, function or duty are not taxable under the Finance Act, 1994. The factual details one as under:

Service Tax Appeal Nos. 75927,76059 of 2014

- (1) The Appellant, ASANSOL DURGAPUR DEVELOPMENT AUTHORITY it is a notified government agency constituted under Sections 11(1) and 11(3) of The West Bengal Town and Country (Planning and Development) Act, 1979 read with Notification No. 1881/T&CP/1R-6/80 dated March 17, 1980 (*vide* pages 54, 61, and 74 of the Compilation dt. 24.4.2024).
- (2) The Order of the Hon'ble Income Tax Appellate Tribunal (ITAT) dated September 8, 2017 (*vide* pages 34 and 43 of the Compilation dt. 24.4.2024), acknowledges in paragraph 7.1 thereof, that *"the assessee is merely a disbursing authority and is required to oversee the proper utilization of the funds given for and on behalf of the ULBs (Urban Land Bodies) of the State Government. We also find that the State Government also directs the assessee to make use of the funds collected such as land premium, ground rent, etc on behalf of the Government and according permission for the same to be invested in bank for onward utilisation of its earmarked purpose."*
- (3) The Hon'ble ITAT accordingly observed in paragraph 7.1 that the assessee abovenamed was "an agent of the Government" "and had merely acted as a custodian of funds belonging to the Government". Such Order of the ITAT dated 8.9.2017 has since attained finality in view of the appeal thereagainst before the Hon'ble High Court at Calcutta being dismissed by Order dated December 19, 2019 in Appeal No. ITAT 230 of 2018 (*vide* page 32 of Compilation dt. 24.4.2014)
- (4) Such view of the Hon'ble ITAT can be verified from the Notifications issued under the TCP Act, as contained in pages 74 to 78 of the Compilation dt. 24.4.2014, and pages 194 to 199 of the Paper Book dt. 15.7.2014. Such notifications are self-explanatory inasmuch as they clearly establish *that from the opening of bank accounts, the management of funds,*

Service Tax Appeal Nos. 75927,76059 of 2014

maintenance of accounts, utilisation of land or assets, and to the appointment of its members; every aspect of the assessee's functioning, is supervised, controlled, authorised and overseen by the State Government, through the Governor of West Bengal and its representatives. In particular, the Notification No. 2892-UD/O/MSB/S-18/2001 dated August 27, 2003 at page 197 of the Paper Book dt. 15.7.2014, will reveal the purpose behind PPP projects, and the objectives of the Government of West Bengal to carry out infrastructure development using any department/agency thereof in partnership with private sector undertakings.

- (5) Likewise, Notification No. 2553-T&CP/O-3/92 dated September 26, 2013 clearly indicates that the Governor of West Bengal empowers the assessee abovenamed *"to execute lease and contract" on its behalf in respect of lands belong to the Government.* Specimen agreements included in the Paper Book dt. 15.7.2014 at page 82 thereof, and page 79 of the Compilation dt. 24.4.2024, will confirm that the assessee only facilitates the leasing of land belonging to the State Government in keeping with its statutory functions on behalf of the Governor, represented by the Special Officer (Urban Development Department (T&CP), Government of West Bengal, who casts its signature on such agreements (see page 88 of the Paper Book dt. 15.7.2014 and page 94 of the Compilation dt. 24.4.2024).
- (6) Notably, a perusal of the TCP Act, will also reveal that Sections 13(ii) and 58 thereof, empowers the assessee abovenamed to acquire, hold and manage such property, both movable and immovable as the Development Authority may deem necessary for the purposes of any of its statutory activities and to undertake "housing schemes for different income groups, commercial areas, industrial estates" among others. (see pages 54, 61, 62, 68 of the Compilation dt. 24.4.2024).

Service Tax Appeal Nos. 75927,76059 of 2014

- (7) By several decisions of this Hon'ble Tribunal and the Apex Court, it is now a settled position of law that services provided by a Central/State Government authority/agency/department against a charge, in pursuance of a statutory obligation, function or duty, cannot be subject to liability under the Act.

3.3. Development Charges collected as an arrear of revenue and deposited in a Special Fund

- (1) Further, a perusal of Sections 106 and 107 of the TCP Act shall also reveal that development charges are to be collected thereunder "as arrears of land revenue" and that every development authority "shall keep in current account in any branch of the State Bank of India or any other Bank approved by the State Government in this behalf, such portion of its fund as may be prescribed and any money in excess of the said sum shall be invested in such manner as may be approved by the State Government."

3.4 No leave of CBEC taken prior to initiating adjudication against the assessee abovenamed in violation of Circular dt. 10.11.2006

- (1) By the said Circular dated 18.12.2006, the CBEC had clarified that services rendered in pursuance of mandatory and statutory function are in public interest and hence, cannot be taxable under the Act. Notably, by another Circular No. 354/59/2006-TRU dated November 10, 2006, the CBEC had also instructed that "*in any case where it is proposed to levy service tax on a service provided by a department of the central government or state government, the same may be referred to the Board*". No such leave appears to have been taken by the Department in the present case however before proceeding against the assessee abovenamed (see **page 29** of the Compilation dt. 24.4.2024

Service Tax Appeal Nos. 75927,76059 of 2014

4. The Ld. Counsel relies on the following case law :

- (1) In **Karnataka Industrial Areas Development Board v. CCT, Bangalore (North), 2020 (40) GSTL 33 (T)** (vide pages 114 and 125 of Compilation dated 24.4.2024) it was decided by this Hon'ble Tribunal in paragraph 8 of its order, that the assessee concerned was *"a statutory body discharging the statutory function as per the statute KIAD Act, 1966 and hence are not liable to pay service tax in view of the ratios of various decisions cited supra"*. It is apparent on a perusal of paragraphs 1 and 2.1 thereof, that the disputed services included services in relation to "Renting of Immovable Property", "Construction of residential complex", "Construction of commercial complex", "Business Support Service", "Maintenance and Repair Service", "Manpower Supply Services" and "Works Contract Services", against which a demand for service tax of Rs. 1295,14,21,404/- was quantified. The entire demand of around Rs. 1295 crores was set aside on the basis of the premise aforesaid.

- (2) In **Commissioner v EPFO, 2018** , the Apex Court upheld the decision of this Hon'ble Tribunal in **EPFO v. Commissioner, 2017** (supra), which placed reliance on a decision of the **Apex Court in Som Prakash Rekky v. UoI, (1981) 1 SCC 449**, to hold in paragraph 11 thereof that *"when the person is an agent or instrument or function of the State, the power is 'public'. The true test is functional. Not how the legal person is born, but why it is created. There are various factors which will suggest a body could be a public authority, these are (a) it is linked to the Government or its function could be described as governmental, (b) it provides a public service, (c) the State regulates, supervises and controls [its] performance, (d) it is subject to judicial review or is publicly accountable for its action, (e) performs charitable objectives, (f) vested with statutory powers, with power to enforce its order by punitive consequences, (g) the legislature specifically intended by*

Service Tax Appeal Nos. 75927,76059 of 2014

an Act to over its functions and responsibilities. In general without any possible dispute, it can be stated that a public authority is one which has a legal mandate to govern, or administer a part [of] some aspect of public life". (vide page 110 of Compilation dt. 24.4.2024)

- (3) Likewise, in **CGST, Delhi III v. Delhi International Airport Ltd, 2023 (74) GSTL 129 (SC)** (vide page 96 of Compilation dt. 24.4.2024), it was observed that that user development fee collected by private licensees of Airport Authority of India for providing services in passenger lounges, rest rooms and other facilities in airports or in relation to passenger amenities, *is in the nature of a statutory levy which is monitored and regulated by law in public interest and is hence, not taxable under the Act* (see paragraphs 1, 7, and 39 at pages 96, 98 and 103 of the Compilation dated 24.4.2024 respectively).
- (4) Such view that services rendered in pursuance of statutory obligation are not taxable under the Act, has been reiterated recently by the Principal Bench of this Hon'ble Tribunal, in **Directorate of Agricultural Engg. v PCC, Bhopal, 2023 (73) GSTL 377 (T)** (vide page 134 of the Compilation dt. 24.4.2024)

5. Based on the above submissions, he prays that the present appeal filed by the assessee ADDA may be allowed on merits.

6. The Ld. Counsel also makes a submission on the ground the entire proceedings are time-barred. He submits that the ADDA is a statutorily created body by the State Govt and is undertaking sovereign functions by collecting amounts on behalf of the Govt. Therefore, no motive to suppress in order to evade payment of Service Tax can be attributed in the case of ADDA. Therefore, he prays that the confirmed demand for the extended period is to be set aside even on account of time bar.

Service Tax Appeal Nos. 75927,76059 of 2014

7. In respect of the appeal filed by the Revenue, the Ld Counsel submits that he relies on the findings given by the Adjudicating authority for the demands dropped by him. He also submits the arguments rendered above in respect of their appeal may also be taken as part of their submissions against the appeal filed by the Revenue. Accordingly, he submits that the appeal filed by the Revenue is required to be dismissed.

8. The AR representing the Revenue reiterates the findings of the Adjudicating authority in respect of the confirmed demands. He submits that the Adjudicating authority has given full details of the services which are liable for payment of Service Tax and quantified the same for each of the year in question. Hence, he submits that the demand has been correctly quantified and confirmed by the Adjudicating authority.

9. However, he submits that the Adjudicating authority has failed to clearly quantify the demands which have been dropped on various counts. Unlike in case of the confirmed demand, he has not given any reason, nor has he quantified the service-wise demands dropped. Hence, he submits that this would render the Order in respect of dropping of demand as non-speaking order.

10. In view of the above submissions, the Ld AR prays that the Appeal filed by the assessee – ADDA may be set aside the Appeal filed by the Revenue may be allowed.

11. Heard both the sides and perused the Appeal papers and other documentary evidence placed before us.

12. In the present case, it would be important to go through the relevant statutory provisions to conclude as to whether Service Tax gets exempted or not.

SECTION 66D. Negative list of services. — The negative list shall comprise of the following services, namely :

(a) **services by Government or a local authority excluding the**

Service Tax Appeal Nos. 75927,76059 of 2014

following services to the extent they are not covered elsewhere—

- (i) Services by the Dept of Posts by way of Speed Post, express parcel post, life insurance and agency services provided to a person other than Government
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or
- (iv) [Any service], other than services covered under clauses (i) to (iii) above, provided to business entities;

SECTION 65B. Interpretations. — In this Chapter, unless the context otherwise requires,—

‘(26A) “Government” means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with Article 150 of the Constitution or the rules made thereunder;’

Article 150 - The Constitution Of India :

150. Form of accounts of the Union and of the States. The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor General of India, prescribe

13. Coming to the factual matrix of the present case :

- (1) ASANSOL DURGAPUR DEVELOPMENT AUTHORITY [ADDA] is a notified government agency constituted under Sections 11(1) and 11(3) of The West Bengal Town and Country (Planning and

Service Tax Appeal Nos. 75927,76059 of 2014

Development) Act, 1979 (henceforth "TCP Act") read with Notification No. 1881/T&CP/1R-6/80 dated March 17, 1980 as can be seen from pages 54, 61, and 74 of the Compilation dt. 24.4.2024 submitted by the appellant - assessee

- (2) The Income Tax Appellate Tribunal vide their Order dated September 8, 2017 held that *"the assessee is merely a disbursing authority and is required to oversee the proper utilization of the funds given for and on behalf of the ULBs (Urban Land Bodies) of the State Government. We also find that the State Government also directs the assessee to make use of the funds collected such as land premium, ground rent, etc on behalf of the Government and according permission for the same to be invested in bank for onward utilisation of its earmarked purpose. It also observed in paragraph 7.1_that the assessee [ADDA] was "an agent of the Government" "and had merely acted as a custodian of funds belonging to the Government".*
- (3) The Appeal filed by the Revenue against this ITAT's Order, was dismissed by Order dated December 19, 2019 in Appeal No. ITAT 230 of 2018
- (4) Notification No. 2553-T&CP/O-3/92 dated September 26, 2013 clearly indicates that the Governor of West Bengal empowers the assessee abovenamed "to execute lease and contract" on its behalf in respect of lands belong to the Government
- (5) As per TCP Act - Sections 13(ii) and 58 , empowers the assessee - ADDA to acquire, hold and manage such property, both movable and immovable as the Development Authority may deem necessary for the purposes of any of its statutory activities and to undertake "housing schemes for different income groups, commercial areas, industrial estates".
- (6) Sections 106 and 107 of the TCP Act also clarifies that development charges are to be collected thereunder "as arrears of land revenue" and that every development authority "shall keep in current account in any branch of the State Bank of India or any other Bank approved by the State Government in this behalf, such portion of its fund as may be prescribed and any

Service Tax Appeal Nos. 75927,76059 of 2014

money in excess of the said sum shall be invested in such manner as may be approved by the State Government."

14. A careful and harmonious perusal of the above details, would clarify that the ADDA has been created under a specific statute and it performs all acts on behalf of the State Govt of West Bengal. Their accounts, income and expenditure etc. are all controlled by and are answerable to the State Government. Therefore, we have no hesitation to come to a conclusion that ADDA is performing sovereign functions on behalf of the State Government of West Bengal.

15. The Bangalore Bench of CESTAT in the case of **Karnataka Industrial Areas Development Board v. CCT, Bangalore (North), 2020 (40) GSTL 33 (T)**, the coordinate Bench of Bangalore has held as under :

7.3 The issue whether the statutory authority performing statutory functions as provided under a statute is liable to service tax or not has been considered and decided by catena of judgments rendered by various Courts. In the case of *Maharashtra Industrial Development Corporation (MIDC)* cited supra, the Hon'ble Bombay High Court has categorically held that no service tax could be demanded on the charges collected by the MIDC, in terms of MID Act, 1961 towards maintenance of industrial areas as the same is in the nature of statutory function performed in terms of the statute. It is pertinent to quote the relevant findings of the Bombay High Court, in paras 5, 6, 7 :-

5. We have given careful consideration to the submissions. Firstly, it will be necessary to note what is set out in the circular dated 18th December, 2006 bearing No. 89/7/2006. Clauses 2 and 3 of the said circular read thus :

"2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public

Service Tax Appeal Nos. 75927,76059 of 2014

authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of Taxable Service to a person and, therefore, no Service Tax is leviable on such activities.

3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy then in such cases, Service Tax would be leviable, if the activity undertaken falls within the ambit of a Taxable Service."

6. Thus, the activities performed by sovereign or public authorities under the provisions of law which are in the nature of statutory obligations are covered by clause 2 which provides that the fee collected by such sovereign or public authorities for performing such activities is in the nature of compulsory levy. Only if such authority performs service which is not in the nature of statutory activity and the same is undertaken for a consideration which is not in the nature of statutory fee, Service Tax would be leviable if the activity undertaken otherwise falls within the ambit of Taxable Service.

7. Going by the show cause notice, the allegation is that the Respondent - MIDC has collected service charges from the plot

Service Tax Appeal Nos. 75927,76059 of 2014

owners/plot allotters in consideration of having provided them various facilities including maintenance, management and repairs of the facilities in the MIDC area. As stated earlier, reliance is placed on clause (64) of Section 65 of the said Act. As pointed out earlier, MIDC is already registered under the category of "renting of immovable property" and for services covered by such category; MIDC is admittedly paying Service Tax.

Further the Hon'ble Bombay High Court has held in *MIDC* case as under :-

11. The Apex Court categorically held that functions and powers of MIDC indicate that the said Corporation is acting as a wing of the Government. In the case of Managing Director, Haryana State Industrial Development Corporation, the Apex Court was considering the role played by Haryana State Industrial Development Corporation. The Apex Court held that the said Corporation discharges sovereign functions. The Apex Court also held that considering the objects and purport for which the said Corporation of Haryana has been constituted, the function discharged by the Corporation must be held as Governmental function.

14. MIDC is a statutory Corporation which is virtually a wing of the State Government. It discharges several sovereign functions. In our view, the Revenue ought not to have compelled MIDC to prefer Appeals before Appellate Tribunal. Not only that MIDC was driven to prefer Appeals before the Appellate Tribunal, these groups of Appeals were preferred by the Revenue. Needless to add that MIDC was required to incur huge expenditure on litigation. All this could have been avoided by the Appellant.

When the maintenance of industrial area itself is held to be

Service Tax Appeal Nos. 75927,76059 of 2014

statutory function, then the main function of acquisition of land, development of such land into industrial area and allotment of such land on lease-cum-sale basis by the appellant would certainly be a statutory function and does not attract levy of service tax. On the same analogy, we hold that other

8. In view of our discussion above, we are of the considered opinion that the appellant is a statutory body discharging the statutory function as per the statute KIAD Act, 1966 and hence are not liable to pay service tax in view of the ratios of the various decisions cited supra

16. When the factual matrix of the assessee-ADDA is viewed with the above case law, we find that the assessee would be exempted from payment of Service Tax when they are performing sovereign functions. But we are also required to check if all the considerations received by ADDA would be in the course of sovereign function alone or if some of the services are commercial in nature.

17. It would also be important to go through the relevant portion of the Circular No. 89/7/2006 dated 18th December, 2006, which are extracted below :

Circular No. 89/7/2006- ST Dated: 18th December, 2006

F.No. 255/1/2006-CX.4

Government of India

Ministry of Finance

Department of Revenue

Subject: Applicability of service tax on fee collected by Public

Authorities while performing statutory functions /duties under the provisions of a law – regarding

A number of sovereign/public authorities (i.e. an agency constituted/set up by government) perform certain functions/ duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the

Service Tax Appeal Nos. 75927,76059 of 2014

Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury. A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as 'provision of service' for the purpose of levy of service tax.

2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of Taxable Service to a person and, therefore, no Service Tax is leviable on such activities.

3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy then in such cases, Service Tax would be leviable, if the activity undertaken falls within the ambit of a Taxable Service."

18. In Maharashtra Industrial Development Corporation (MIDC) judgement of , the Hon'ble Bombay High Court, it would be relevant to go through Para 6, which is reproduced below :

6. Thus, the activities performed by sovereign or public authorities under the provisions of law which are in the nature of statutory obligations are covered by clause 2 which provides that the fee collected by such sovereign or public authorities for performing such activities is in the nature of compulsory levy. Only if such authority performs service which is not in the nature

Service Tax Appeal Nos. 75927,76059 of 2014

of statutory activity and the same is undertaken for a consideration which is not in the nature of statutory fee, Service Tax would be leviable if the activity undertaken otherwise falls within the ambit of Taxable Service.

19. The Annexure B of Show Cause Notice showing quantifying of demand for various years under different heads is reproduced below:

Period	Income as per Balance Sheets	Income under Different Sub - Head	Value shown in Balance Sheet/ Bank Statement	Value declared in the ST-3	Differential Value on which Tax not paid	Rate of Tax	Service tax Payable	Edu.Cess Payable	H.E.Cess Payable
2007-08	Rental Income (Schedule-9)	Ground rent, house rent	8173184						
		License fees							
		Hire Charges of Road Roller							
	Other Income (Schedule-11)	Land develop fees	7858259						
		Electric Installation							
		Sewerage connection							
		Sub-lifting & Way							
		Hording Charge							
	Schedule-8	Water connection charge	2552259						
Total	2007-08		18583702	0	18583702	12%	2230044	44601	22300
2008-09	Rental Income	Ground rent, house rent	760451						
		License fees	7655211						
		Hire Charges of Road Roller	70400						
	Other Income Sche-18/1	Electricity Installation	1384921						
		Sewerage connection	1968279						
		Hording Charges	3163342						
		Sub-lifting & Way lease	1018750						
	Sche-12/2	Water connection charge	2663666						
Total:-	2008-09		18685020	0	18685020	12%	2242202	44844	22422
2009-10			633835526	0	633835526	10%	63383	1267671	633836
2010-11			1381246670	17604744	1363641926	10%	136364	272728	1363642
2011-12			694903410	0	694903410	10%	69490341	138980	694903
Total			2747254328	17604744	2729649584		273710	547420	2737103

20. A careful reading of the Board Circular dated 18.12.2006, would clarify that *all the amounts collected by the statutory body would not get automatically exempted from payment of Service Tax on a blanket basis*. Only those charges / fees, which are compulsory / mandatory and which are levied and collected on behalf of the Govt. would be exempt from payment of Service Tax, since this would be in the nature of performing sovereign function. But if the same body renders some other service in the normal course and receives the consideration, the same would be taken as part of the sovereign function and accordingly, no exemption from Service Tax payment can be claimed by such body. This point has also been noted by the Hon'ble Mumbai High Court at Para 6 of their order on MIDC case cited supra.

21. Therefore, in the present case, though it stands established that ADDA is a statutorily created body, also recognized as such by ITAT for Income Tax purposes, and is seen to be performing some sovereign functions like collecting licensing fee and other fee on account the land development [which is required to be verified], the other services provided by them, as given in the Table [Annexure B of SCN] above, like that of Renting of Immovable property , Renting of Advertisement space, Leasing of Tangible goods like road roller are not eligible for Service Tax exemption, as is vehemently being canvassed by the Ld Counsel. We take a considered view that on such services, ADDA would be required to pay the Service Tax, since these services are not in any way on account of performing of any sovereign function.

Service Tax Appeal Nos. 75927,76059 of 2014

22. The quantification of the confirmed demand by the Adjudicating authority is as per the following table :

Year	Renting of immovable property service(Rs.)	Selling of space and time for Advertisement service(Rs.)	Supply of Tangible goods Service (Rs.)	Erection, Commissioning and Installation Service	Commercial & Industrial Construction Service	Total (Rs.)
2007-08	16,31,75,253	88,21,061	1,47,620			17,21,43,934
2008-09	96,36,412	31,63,342	70,400			1,28,70,154
2009-10	1,83,91,455	9,65,134	85,540			1,94,42,129
2010-11	2,23,92,667	10,96,833	—			2,34,89,500
2011-12	1,31,81,707	11,77,690	—			1,43,59,397
Total	22,67,77,494	1,52,24,060	3,03,560			24,23,05,114

E) TOTAL SERVICE TAX LIABILITY

Year	Total taxable value (Rs.)	Service tax payable (Rs.)	Cess (Rs.)	S& H.E.Cess (Rs.)	Total (Rs.)
2007-08	17,21,43,934	2,06,57,272	4,13,145	2,06,572	2,12,76,989
2008-09	1,28,70,154	15,44,418	30,888	15,444	15,90,750
2009-10	1,94,42,129	19,44,213	38,884	19,442	20,02,539
2010-11	2,34,89,500	28,18,740	56,375	28,187	29,03,302
2011-12	1,43,59,397	17,23,128	34,462	17,231	17,74,821
Total	24,23,05,114	2,86,87,771	5,73,754	2,86,876	2,95,48,401

23. The quantification arrived service-wise is as per the Schedule to Balance Sheet as per the OIO. But we find from the SCN Annexure, such bifurcation for demanding the Service Tax on year-wise basis is missing in the Annexure B to the Show Cause Notice. In fact, for 2007-08 and 2008-08, the incomes have been bracketed under a generic heading, without giving the relevant amounts for the specific services. As has been observed above, the Licensing Fee, Land Development fee

Service Tax Appeal Nos. 75927,76059 of 2014

would be in the nature of compulsory fee / mandatory fee, being collected as part of sovereign function and hence would be exempted. But no bifurcation has been carried out in the Annexure B to SCN, wherein the quantification is done.

24. In respect of 2009-10, 2010-11 and 2011-12, even the above perfunctory work has not been undertaken. Simply the value shown in the Balance Sheet / Bank Statement have been taken to quantify the demand. Therefore, we see considerable force in the argument of the appellant that quantification of demand is neither scientific nor is properly backed by any concrete documentary evidence. More than Rs.28 crores demand has been made for the year 2009-10, 2010-11 and 2011-12 with absolutely no basis for the same. The amount dropped by the Adjudicating authority more or less tallies with these figures. We have no hesitation in holding that Service Tax demand for the 2009-10, 2010-11 and 2011-12 cannot be legally be sustained. When there was no service-wise quantification, how is the Adjudicating authority to give such details while dropping the demand ? Hence, the Revenue's appeal against the dropping of the demand by the Adjudicating authority gets dismissed on this count alone.

25. Coming to the arguments of the Appellant, as we have observed in Para 21, above, not all the services rendered by them would get blanket exemption from payment of Service Tax. Only Licensing Fee and Land Development Charges [if they are proved to be a charge as per statute] would get the exemption. However, in view of the flawed quantification adopted by the Revenue while issuing the SCN, even the confirmed demand of Rs.2,95,48,401/- cannot be legally sustained. Therefore, we allow the appeal of the appellant on merits.

26. We now take up the arguments of the assessee-ADDA on account of time bar. From the above detailed analysis, it gets clarified that the

Service Tax Appeal Nos. 75927,76059 of 2014

ADDA a body created by statute and is undertaking various functions assigned to them by the State Govt. and is also rendering various taxable services. But it is an admitted fact that all their income and expenditure are subject to the control of the State Govt. Hence, it would be difficult to adduce any ulterior motive to ADDA to the effect that they have suppressed the facts with an intent to evade the Service Tax payment. It is also seen that the figures taken for quantification of demand have been derived the Income and Expenditure statement and Balance Sheet of ADDA, which shows that all the details have been disclosed in the records. Further, their reliance on ITAT order, and vehement argument about their being statutory body carrying out sovereign functions, shows that they may have carried bonafide belief that they are not required to the Service Tax. Hence, we hold that the SCN issued on 12.10.2012 for the 2007-2008 to 2011-12 is partly time barred. Accordingly, we also hold that the confirmed duty for the extended period is legally not sustainable.

27. To summarize :

- (a) The Appeal filed by the Revenue is dismissed
- (b) The Appeal filed by the appellant [ADDA] is allowed fully on merits.
- (c) The Appeal filed by the appellant [ADDA] is allowed on time bar in respect of the confirmed demand for the extended period.

(Pronounced in the open court on...11th December, 2024.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.